

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. See 86 Ill. Adm. Code 140.101. (This is a GIL).

December 30, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 23, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Pursuant to our telephone conversation yesterday, I am writing to follow-up on your response dated November 9, 1999 (copy attached) to our letter dated August 3, 1999. The following will synthesize the facts and inquiry presented by our previous letter. As we discussed, this should enable the Illinois Department of Revenue to respond directly to our inquiry. Please refer to our prior letter for the meaning of all capitalized terms and a detailed description of our facts and analysis.

Facts

The Company we represent is an unregistered, out-of-state, De Minimis Serviceman that sells services accompanied with a de minimis amount of tangible personal property to customers located in Illinois. The Company has nexus with Illinois. The Company purchases and uses all tangible personal property it provides in connection with its services in a state other than Illinois *on a sales/use tax free basis*. The company uses such tangible personal property (essentially paper and ink) to create for its customers specially ordered printed material. The printing is done at a location outside of Illinois. The Company ships the printed material, via common carrier, to its customers in Illinois from a location outside Illinois.

Question Presented

How does Illinois tax, if at all, unregistered De Minimis Servicemen who purchase and use tangible personal property outside the state of Illinois (but who have nexus with, and sell services accompanied with a de minimis amount of tangible personal property in Illinois)?

Analysis

According to Section 2 of the SOT Act, sales by unregistered De Minimis Servicemen are not subject to tax in Illinois, instead, purchases by such servicemen are subject to tax. The apparent rationale is that De Minimis Servicemen provide only a de minimis amount of tangible personal property relative to the amount of services they provide. As a result, unregistered De Minimis Servicemen are treated as if they consume such tangible personal property. In other words, unregistered De Minimis Servicemen are deemed the 'end users' of tangible personal property and are required to pay tax as such.

Accordingly, and as you indicated in your response, Illinois law requires unregistered De Minimis Servicemen to pay Illinois use tax to their Illinois suppliers or to self-assess and remit Illinois use tax to the Department when making purchases from unregistered out-of-state suppliers. You further indicated that '[t]hose servicemen are not authorized to collect 'tax' from their service customers because they, not their customers, incur the tax liability.' However, your response does not address what tax, if any, unregistered De Minimis Servicemen must pay when, as set forth in the facts above, such Servicemen purchase and use the property outside of Illinois and then ship such property via common carrier to its Illinois customers. In such instance, Illinois use tax should not apply. It appears to us that, based on Section 2 of the SOT Act, such Servicemen must pay tax in accordance with the laws of the state of purchase and use, even if (as is the case here) the state of purchase and use does not impose a sales or use tax on such purchase and use.

We appreciate your willingness to revisit our inquiry, and ask that you confirm the Department's position in this regard either orally or in writing. Please call me with any questions at ####.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.101.

You indicate in your letter that your client is an out-of-State unregistered de minimis serviceman who has nexus with Illinois. As you know, servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than

35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production).

Section 2 of the Service Occupation Tax Act states in regard to servicemen who are unregistered and de minimis, in part, that "[t]he purchase of such tangible personal property by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act." There is no Retailers' Occupation Tax or Use Tax liability in the circumstances you describe where your client purchases the paper and ink from an out-of-State supplier tax-free based upon an exemption from tax in that state and then uses the paper and ink out-of-State to produce the final product which is then shipped via common carrier to your client's customers located in Illinois.

As stated above, in this situation, your client does not have a Use Tax obligation in Illinois. The use of the tangible personal property occurs out-of-State.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.